

Decision 01-04-019 April 19, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Division of Ratepayer Advocates
for Petition for Modification of Resolution
T-15160 pertaining to Pacific Bell's
Post-Retirement Benefits other than pensions.

Application 93-01-003
(Filed January 4, 1993)

Application of Division of Ratepayer Advocates
for Petition for Modification of Resolution
T-15161 pertaining to GTE California
Incorporated's (GTEC) Post-Retirement Benefits
other than pensions.

Application 93-01-004
(Filed January 4, 1993)

O P I N I O N

Summary

By this order, we deny the Division of Ratepayer Advocates¹ (DRA) request to modify Commission Resolutions T-15160 and T-15161 pertaining to Pacific Bell and GTE California Incorporated's (GTEC, now Verizon California Inc.) recovery of post-retirement benefits other than pensions (PBOP).²

¹ The functions the Commission's Division of Ratepayer Advocates performed as a participant in this proceeding now reside with the Commission's Office of Ratepayer Advocates.

² PBOP benefits are defined as those benefits other than pensions that employees receive upon their retirement from work, which include medical and dental care, life insurance, and legal services.

Petition

On February 11, 1993, DRA filed the above-cited applications to modify Pacific Bell's Price Cap Resolution T-15160 and GTEC's Price Cap Resolution T-15161 issued December 16, 1992. The disputed resolutions authorized surcharge adjustments to the utilities' (Pacific Bell and GTEC) price cap mechanism which included a \$107.5 million revenue requirement increase for Pacific Bell and a \$42 million revenue requirement increase for GTEC³ applicable to PBOP.

DRA seeks to modify these resolutions, alleging that the Commission incorrectly found that the utilities submitted their advice letter filings in compliance with Decision 92-12-015 (PBOP Decision).⁴ The PBOP Decision addressed the procedures that the utilities should use to recover PBOP costs.

DRA believes that the utilities failed to comply with the PBOP Decision because GTEC did not use the employee's total active service life as the attribution period and Pacific Bell did not use a 20-year amortization period of prior PBOP accruals. DRA also believes that the utilities failed to comply with the PBOP Decision because the utilities did not provide any evidence that:

- a. Trusts have been established by the utilities and approved by the Internal Revenue Service (IRS).
- b. PBOP funding is not used for any other purpose.
- c. PBOP funding is segregated from all other investments and trusts.
- d. Surplus pension assets are used to pre-fund PBOP.

³ GTEC's \$42 million revenue requirement increase was \$7.773 million lower than the \$49.773 million revenue requirement increase alleged by DRA to have been granted GTEC.

⁴ 46 CPUC2d, 499-537, (1992).

- e. Actuarial valuation and revenue requirement calculations are fair, reasonable, and accurate.

DRA requests that the resolutions be modified so that PBOP surcharges are subject to refund until the utilities demonstrate compliance with the PBOP Decision. DRA also requests that the resolutions be modified so that PBOP surcharges are rescinded and forfeited if the utilities remain in non-compliance with the PBOP Decision after a review of the utilities' compliance filing by DRA and the Commission's Advisory and Compliance Division (CACD).⁵ DRA further requests that the resolutions be modified to require excess PBOP surcharges refunded to ratepayers if a DRA and CACD review of the compliance filing determines that the PBOP surcharges are too much.

Utilities Response

On February 8, 1993, the utilities filed separate responses to DRA's applications. The utilities represent that their advice letter filings fully complied with the PBOP Decision and were accepted as such by the CACD and the Commission. The utilities provided copies of December 10, 1992 CACD Division Director letters sent to each of the utilities⁶ confirming their advice letters complied with the PBOP Decision. Although CACD requested the utilities provide additional information to assist CACD in its PBOP monitoring efforts, the letters stated in part that:

⁵ CACD also ceased to exist as a staff unit on September 10, 1996, the product of a Commission staff reorganization. The functions relevant here are now assigned to the Telecommunications Division.

⁶ Attachment 1 of Pacific Bell's and Exhibit A of GTEC's response to DRA's applications.

“We have received and reviewed your December 8, 1992 filing in compliance with Ordering Paragraph 7 of Decision 92-12-015 and find it to be in compliance with the ordering paragraph and the intent of the decision.”

Among other matters, Ordering Paragraph 7 required each utility to make a compliance filing setting forth their revenue requirement established by the PBOP Decision and the incremental surcharge adjustment necessary to recover their PBOP revenue requirements in their 1993 price cap index. These compliance filings were timely submitted.

The utilities also addressed other issues identified by DRA to demonstrate that the Commission correctly found the utilities in compliance with the PBOP Decision.

Employee's Total Active Service Life

GTEC confirmed that it did not use the employee's total active service life approach identified in the PBOP Decision. GTEC used a benefits/years of service approach. GTEC explained that the PBOP Decision provided for the alternative use of a benefits/years-of-service approach if one condition could be met. That condition was a demonstration to CACD that the alternative approach would not increase the utility's PBOP cost by more than 10%.

On December 15, 1992, GTEC demonstrated to CACD that its alternative approach would result in only a 4.03% increase in PBOP costs. Subsequently, by a February 3, 1993 CACD letter, all parties that participated in the PBOP proceeding, including DRA, were notified that GTEC and ten other utilities were authorized to use the alternative approach.⁷ Hence, GTEC's use of

⁷ Exhibit B of GTEC's response.

the benefits/years-of-service approach was in compliance with the PBOP Decision.

20-Year Amortization Period

Contrary to DRA's assertion that Pacific Bell had not used a 20-year amortization period of prior PBOP accruals, Pacific Bell cited testimony provided by its independent actuary in the PBOP proceeding to demonstrate its compliance with this issue.⁸ By its letter of February 4, 1993, CACD confirmed that Pacific Bell correctly used a 20-year amortization period. Hence, Pacific Bell complied with the 20-year amortization period.

PBOP Trust and Funding Issues

The utilities also disputed DRA's contention that they failed to provide DRA with any evidence regarding the conditions of existence, approval, use and segregation of PBOP trusts and funds, as set forth in Ordering Paragraph 2 of the PBOP Decision. The utilities acknowledged that these requirements pertained to future ongoing advice letter filings. However, they contend that Ordering Paragraph 2 was not applicable to the initial advice letter filings.

Ordering Paragraph 7 of the PBOP Decision confirmed that the requirements set forth in Ordering Paragraph 2 were not applicable to the utilities' initial advice letter filing. That ordering paragraph required the recovery of future years', not current years', PBOP costs to satisfy the requirements set forth in Ordering Paragraphs 2 and 8 of the PBOP Decision.⁹ Further, the PBOP Decision did not require the utilities to provide ORA with

⁸ Page 16 of Exhibit 54 to Investigation 90-07-037.

⁹ 46 CPUC2d, 499 at 533 (1992).

evidence regarding the conditions of existence, approval, use and segregation of the utilities' PBOP trusts and funds.

Irrespective, of the lack of any utility requirement to provide DRA with such evidence, the utilities agreed to provide DRA with such information by responding to data requests. However, the utilities asserted that information on the conditions of existence, approval, use and segregation of their PBOP trust and funds already existed in the PBOP proceeding and were either already available or provided to DRA for review.

For example, during the discovery process of the PBOP proceeding, GTEC provided DRA with a copy of the Voluntary Employees Beneficial Association agreement between GTEC and its employees union that addressed many of DRA's issues. Because GTEC and its employees union have not voiced any intention to terminate that agreement, the agreement remains in effect. GTEC provided CACD with a copy of its trust agreement on March 6, 1992 and again on December 15, 1992.

Pacific Bell also provided ORA with copies of its trusts established subsequent to the issuance of the PBOP Decision and prior to approval of the resolution authorizing recovery of PBOP costs.

Surplus Pension Assets

Pacific Bell and GTEC confirmed DRA's assertion that the PBOP Decision required the utilities to use surplus pension assets to pre-fund their PBOP. However, the utilities did not apply any surplus pension assets that may have existed because they do not have the approval of the IRS or employee unions to do so. A review of the PBOP Decision confirms the utilities' position on not reducing their PBOP costs by any surplus pension assets that may exist. The PBOP Decision specifically stated that:

“The use of surplus pension assets is not a viable alternative source of funding PBOP cost at this time. However, we do not want to preclude utilities from using surplus pension assets to fund PBOP expenses. Therefore, to the extent that the IRS lifts its restrictions and the employee unions agree to the use of surplus pension assets to fund PBOP expense we fully expect the utilities to do so.”¹⁰

Actuarial Valuation and Revenue Requirement Calculations

The utilities also disputed DRA’s contention that they failed to provide evidence on the reasonableness of their PBOP actuarial valuations and revenue requirement calculations. Pacific Bell explained that support for its actuarial valuations and revenue requirement calculations were included in the PBOP proceeding. Its independent actuary also opined that its PBOP valuations and calculations were in conformance with generally accepted actuarial principles, appropriate for use in implementing PBOP cost recovery, and appropriate for determining Pacific Bell’s proper funding level for PBOP contributions.¹¹

GTEC also based its PBOP actuarial valuations and revenue requirement calculations on the actuarial assumptions testified to by its actuary in the PBOP proceeding. Subsequently, on December 31, 1992, GTEC submitted a letter to CACD from that same actuary certifying that GTEC’s methods and assumptions used in determining its PBOP costs were reasonable and in conformance to the requirements of the PBOP Decision.

¹⁰ 46 CPUC2d, 499 at 516 (1992).

¹¹ Pages 18 and 21 of Exhibit 57 to Investigation 90-07-037.

Discussion

We have reviewed and considered the issues that DRA believed substantiated a need to modify the resolutions and the responses of the utilities. From this review and consideration, we conclude there is no basis to concur with DRA that we incorrectly found that the utilities submitted advice letter filings in accordance with the PBOP Decision. We further find no basis or need to modify Resolutions T-15160 and T-15161 as requested by DRA. We summarily deny DRA's petitions for modification on the grounds that DRA has not persuaded us that there is a need to modify Resolutions T-15160 and T-15161.

Comments of Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments from Verizon California Inc. were received but did not result in any changes to the draft decision.

Findings of Fact

1. CACD found the utilities advice letter filings in compliance with Ordering Paragraph 7 and in compliance with the intent of the PBOP Decision.
2. The PBOP Decision authorized the use of the benefits/years-of-service approach if the utilities demonstrate to the CACD prior to January 1, 1993 that this approach results in a minimal increase in PBOP cost.
3. DRA was notified by CACD that GTEC was authorized to use the benefits/year-of-service attrition approach to recover its PBOP costs.
4. Pacific Bell used a 20-year amortization period for its prior PBOP accruals.
5. PBOP trusts and funding issues are applicable to the recovery of future year PBOP cost in each subsequent year's price cap filing.
6. The PBOP Decision found that the use of surplus pension assets was not a viable alternative source of funding PBOP cost.

7. GTEC's independent actuary found that GTEC's valuations and calculations were in conformance with generally accepted actuarial principles, appropriate for use in implementing PBOP cost recovery, and appropriate for determining the proper funding level for PBOP contributions.

8. GTEC's actuary certified that GTEC's methods and assumptions used in determining its PBOP costs were reasonable and in conformance to the requirements of the PBOP Decision.

Conclusion of Law

DRA's petitions for modification of Resolutions T-15160 and T-15161 should be summarily denied on the ground that the Commission is not persuaded to modify the resolutions.

O R D E R

IT IS ORDERED that:

1. The petitions to modify Resolutions T-15160 and T-15161 filed by the Division of Ratepayer Advocates on January 4, 1993 are denied.
2. Application (A.) 93-01-003 and A.93-01-004 are closed.

This order is effective today.

Dated April 19, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.